# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 3118 of 1992

**For Approval and Signature:**

**HON'BLE MR JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgement ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgement ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BALUBEN & 5 - Petitioner(s)**

**Versus**

**HANSABEN & 6 - Respondent(s)**

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**Appearance :**

MR BJ JADEJAfor Petitioner No(s).: 1 - 1,2,3,4,5.
MR HJ NANAVATI for Respondent No(s).: 1.
SERVED BY RPAD - (R) for Respondent No(s).: 2.
MR AJ PATEL for Respondent No(s).: 3,6.
RULE SERVED for Respondent No(s).: 4,5.

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**CORAM :HON'BLE MR JUSTICE AKIL KURESHI**

**Date : 15/06/2005**

**ORAL JUDGMENT**

The petitioners herein claiming to be the tenants of land admeasuring about 132 acres and 19 gunthas of village Bavra Taluka Mehmadabad have initiated proceedings under section 70(b) of the Bombay Tenancy and Agricultural Lands Act

(hereinafter to be referred to as the “Tenancy Act”) before the Mamlatdar and Agricultural Lands Tribunal, Mehmedabad. In fact, 9 separate tenants claiming tenancy rights over the portion of the above suit land had initiated separate proceedings before the Mamlatdar and ALT, Mehmedabad in the year 1973. All these cases came to be renumbered and consolidated as Tenancy Case Nos.1 to 9 of 1981. It is the case of the petitioners that they were cultivating the suit lands since 1960 as tenants and that therefore had established tenancy rights over the suit property. In the year 1963, erstwhile owners of the suit lands i.e. Respondent Nos.1, 2, 4 & 5 herein had entered into an agreement to sell the suit lands by an agreement dated 11.4.63 in favour of respondent Nos.3 & 6 herein. It appears that the agreement to sell between the parties got in legal controversies and eventually by virtue of a High Court judgment dated 3rd December 1976, the original land owners were required to perform specific performance of the contract to sell and that is how respondent Nos.3 & 6 became owners of the suit lands.

2. It is the case of the petitioners that they were cultivating the suit lands even prior to the agreement to sell between the land-lords and the subsequent owners, namely respondent Nos.3 & 6 herein. It is their case that neither the original land-lords nor the subsequent land-lords are cultivating the suit lands personally since they are not residing on or near the suit lands. In fact, it is the case of the petitioners that respondent Nos.3 and 6 are residing at Sarsa in Kheda

district (now part of newly created Anand district) which is far away from the suit lands which are situated in Bavra village and that therefore, they could not have personally cultivated the suit lands.

3. The Mamlatdar and ALT, Mehmedabad, however by his judgment dated 6th October 1981 was pleased to reject the application filed by the present petitioners under section 70(b) of the Tenancy Act for being declared as tenants of the suit lands.

4. Being aggrieved by the said decision of the Mamlatdar & ALT the petitioners preferred appeal before the Deputy Collector, Kheda being Tenancy Appeal No.3903/82. The appeal filed by the petitioners before the Deputy Collector, Kheda also came to be rejected by the judgment dated 20th December 1982. The petitioners, therefore, preferred revision application before the Gujarat Land Revenue Tribunal being Revision Application No.TE..535/83. This Revision Application also came to be rejected by the GRT by the decision dated 29th November 1991. The petitioners have, therefore, challenged the above mentioned orders passed by the Revenue Authorities and the GRT in the present petition.

5. Appearing for the petitioners, learned advocate Shri B.J.Jadeja has submitted that the authorities below have gravely erred in rejecting the claim of the petitioners. He contended that there was misjoinder of causes of action and misjoinder of parties inasmuch as 9 separate tenancy claims of individual claimants of tenancy rights on different lands were consolidated by the Mamlatdar and ALT which created

confusion and eventually, the procedure adopted resulted into miscarriage of justice.

5.1 It was further contended on behalf of the petitioners that the Deputy Collector had heard the appeal filed by the petitioner and the appeal was thereafter kept for pronouncement of judgment. It was at that stage, arguments on behalf of respondent Nos.3 and 6 were heard by the Deputy Collector without any intimation to the petitioners. It is contended that the procedure adopted was illegal and resulted into loss and injuries to the petitioners.

5.2 It was next contended that respondent Nos.3 & 6 are residents of village Sarsa, Dist: Anand which is situated at a considerable distance from the suit land an that the said respondents were therefore not cultivating the suit lands personally.

6.3 It was also contended that on behalf of the petitioners that the petitioners were residing at the suit lands in their huts. This aspect has been lost sight of by the authorities below, according to the learned advocate for the petitioners.

6. Appearing for respondent Nos.3 & 6, learned advocate Shri A.J.Patel supported the orders passed by the authorities below. He contended that the proceedings were consolidated at the joint request of the parties and no injustice has been caused to the petitioners. He, therefore, contended that the such a procedural objection cannot be sustained in a writ

petition under Article 227 of the Constitution of India.

6.1 It was further contended by Shri A.J.Patel that the aspect of hearing the arguments on behalf of respondent Nos.3 & 6 by the Deputy Collector has been dealt with by the GRT in its impugned judgment and that no prejudice is caused to the petitioners by hearing of the arguments on behalf of the said parties.

6.2 It was further contended on behalf of respondent Nos.3 & 6 that there is no material on record to establish the tenancy rights of the petitioners. The authorities below have examined all aspects of the matter and come to concurrent findings of fact which could not be disturbed by this Court in exercise of writ jurisdiction. It was also canvassed on behalf of respondent Nos.3 & 6 that the petitioners have totally failed to establish the tenancy rights and that there is no evidence on record to suggest that they were at any point of time residing on the suit lands. It is contended that respondent Nos.3 & 6 were put in actual physical possession of the suit properties in the year 1963 when the agreement to sell was entered into between the said respondents and the erstwhile land owners. At no point of time, the petitioners raised any claim of tenancy nor is the tenancy claim reflected in the village records.

6.3 Reliance was also placed on the decision of the Hon'ble Supreme Court reported in 1981 GLR 461 and reported in (2002) 1 SCC 319 to point out that in exercise of powers under Article 227 of the Constitution of India,

concurrent findings of fact arrived at by the authorities below could not be interfered with and unless gross illegality has been committed resulting in palpable injustice, interference would not be warranted.

7. Having considered the rival submissions and having examined the evidence on record, it is apparent that the tenancy claims of the petitioners came to be turned down by the authorities below by concurrent findings of fact. The Mamlatdar & ALT rejected the application of the petitioners for being declared as tenants of the suit lands. The appeal filed by the petitioners came to be turned down by the Deputy Collector and the Gujarat Revenue Tribunal also concurred with these findings of the authorities below. Thus the authorities below have found that the material on record is not sufficient to establish the tenancy claim of the petitioners. In this factual background, the contentions raised on behalf of the petitioners are required to be examined.

8. With respect to the contention of misjoinder of causes of action and parties, it can be noted that before the Mamlatdar and ALT, purshis was passed on behalf of the parties requesting the authority to consolidate the proceedings and to hear all 9 cases together. It was thus at the request of all the parties that the cases came to be consolidated and disposed of by the common judgment. In that view of the matter, objections raised on behalf of the petitioners regarding consolidation of the proceeding cannot be

entertained. Even otherwise, I do not find that any injustice has been caused to the petitioners on account of such consolidation of proceedings.

9. With respect to the contention raised on behalf of the petitioners regarding the procedure adopted by the Deputy Collector of having heard the arguments on behalf of respondent Nos.3 & 6 herein after closing the arguments of the petitioners, I find that this aspect of the matter has also been considered and examined by the GRT. In this regard, it is noted that the learned advocate for the petitioners was not able to show from the judgment as to how the petitioners were prejudiced. It is noted that there is no mention about the arguments advanced on behalf of the said respondents in the decision rendered by the Deputy Collector. The Tribunal, therefore, concluded that there is no injustice caused to the parties on account of the procedure adopted. I would tend to agree with the view of the GRT that it is true that ordinarily such a procedure should not be adopted and if the stage of hearing of the arguments of one party or the other is to be reopened for valid reasons once having closed the said stage, the bare minimum requirement to be followed by the authorities would be to put the rival party to notice and hear arguments in presence of the representative of the rival party. In the present case, however, since no prejudice is demonstrated on account of the hearing of the arguments in absence of the other side, it is not possible to interfere with the ultimate decision which otherwise also

came to be upheld by the GRT, in exercise of powers under Article 227 of the Constitution, considering the limited scope of the jurisdiction of this Court while examining the legality of the proceedings in exercise of superintending jurisdiction.

10. Regarding the contention that respondent Nos.3 & 6 reside at Sarsa and therefore could not have been cultivating the land personally, it may be noted that the question is not so much as to whether the said respondents were cultivating the land personally or otherwise, the real question is whether the petitioners had succeeded in establishing their tenancy rights over the suit lands which they had to do by leading cogent evidence. As noted earlier and as will be discussed hereinafter, the authorities below have found that there was no evidence to sustain such a claim.

11. Regarding the contention of the petitioners that they have been residing on the said lands since 4 decades, I do not find any evidence on record to establish such a claim. In fact, the GRT in its impugned decision examined this aspect of the matter at considerable length. It appears that some documents in the form of copies of Akrani Patrak of the houses in which the petitioners are claiming to be residing were produced before the GRT and were permitted to be taken on record. On the basis of these documents, it was sought to be canvassed that the petitioners are residing on the suit properties since many years. In this regard, the Tribunal observed that the applicants (i.e. Petitioners herein) have

not stated in the applications that they are residing in the huts situated in the survey numbers. Moreover, Akrani Patrak is of the year 1989-90 means that the applicants got their names entered in the Akrani Patrak only recently with a view to create evidence. Otherwise, from the agreement to sell of the suit property dated 11.4.63, it is clear that 8 huts are shown in the suit survey numbers in the agreement to sell and if applicants were really residing in those huts then their names should have been shown in the akrani patrak or there would have been some evidence to show that they were in actual possession of the said property. The Tribunal, therefore, observed that no reliance can be placed on the copies of akrani patrak produced by the applicants and the same is nothing but creation of evidence with a view to support their false claim.

12. From the above discussion, it can be seen that three authorities below concurrently found that the petitioners have completely failed to establish the tenancy claim on the suit land and that there is no evidence on record to show that the petitioners have been cultivating on the lands since 1960 as claimed by them. Barring some oral statements made on behalf of the petitioners which was sought to be refuted by similarly oral depositions made on behalf of the respondents, there is no evidence produced on record to establish the tenancy claims of the petitioners. The authorities below, in my view, therefore, correctly came to the conclusion that the application filed by the petitioners

was required to be rejected. I do not find sufficient reason to upset the concurrent findings of fact arrived at by the three authorities below. I do not see any perversity in the findings of fact. Even otherwise, I do not find any illegality in the decisions challenged in the present petition. The petition is, therefore, hereby rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

**(Akil Kureshi, J.)**

**(vjn)**